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the victim's perspective

dr. Jan J.M. van Dijk

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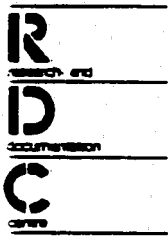
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Compensation by the state or by the offender: the victim's perspective.

Paper presented at the Conference on Victims, Restitution and Compensation in the Criminal Justice System at Cambridge U.K. on 13-16 August 1984.

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1 INTRODUCTORY REMARKS

In The Netherlands, as in the United Kingdom and most other Western countries, much attention is currently being given by legal experts and politicians to the financial and other problems of crime victims. Discussing the social and ideological background of the present boom in legislative and social programs concerning crime victims would go beyond the scope of this paper, but one of the most striking characteristics of the current movement for a better deal for crime victims is that it cuts across political lines. Both the present Tory government in the UK and the socialist government in France are among its proud supporters. Equally research in The Netherlands has shown that 88% of the national population would welcome greater expenditure by the State on behalf of crime victims (Van Dijk, 1983). Another poll showed that 89% of the Dutch population regard compensation of the victim by the offender as a suitable method by which to address the crime problem (unpublished results of the National Crime Survey, 1982). In both instances these opinions appeared to be little related to factors like age, sex or political affiliation. On the issue of crime victims a kind of national consensus seems to have emerged. More, much more ought to be done on their behalf, according to an impressive majority of the public.

Obviously, this immense popular appeal of the case for a better treatment of crime victims puts great pressure upon governments to accomplish something in this area very soon. Although the protagonists of the victim's movement naturally rejoice in this development, it might or even should also give them cause for concern. Governments are likely to respond to the present enthusiasm for a better policy for victims by extending or modifying existing legal and social provisions. Several European countries, for example, are currently in the process of extending the scope of their state compensation schemes in one way or another. In France the so-called *Partie Civile*-procedure has been amended in order to make it more effective. Whether these technical improvements really address the problems at issue is uncertain. At present very little is known about the actual

and potential effectiveness and efficiency of these and other kinds of provisions for victims. It is possible that some of the existing provisions suffer from such fundamental flaws that they should be substituted by quite different systems. Ill-considered improvements to these provisions might eventually prove to be counter-productive. Ideally, governments should adopt an experimental approach towards their victim-oriented policies. Various systems and methods should be implemented locally in order to be evaluated by means of social research. Unfortunately, most legal provisions for victims like generous state compensation or victim participation in the trial cannot be introduced on an experimental basis. For this reason, cross-national comparative studies on the effectiveness of the various prevailing legal provisions for victims seem to be particularly relevant.

In this paper I will try to make a contribution to such an international comparison by describing the experiences of The Netherlands with its currently existing legal provisions for compensating crime victims. At some points I will make preliminary comparisons with experiences in the UK and elsewhere. The focus of the paper will be on the Dutch state compensation scheme -known as the Compensation Fund- and on the Dutch system of compensation by the offender. First of all, the substance of the Dutch provisions in this area will be briefly described. Secondly, data from various sources will be presented on the actual performance of these provisions and on the number of crime victims actually served by them. Next, I will present some preliminary findings of an ongoing research project of the Research and Documentation Centre of the Ministry of Justice on the experiences of crime victims with the criminal justice system, the Compensation Fund, Victim Support Schemes and offender compensation. Finally, some observations will be made on the merits of the various systems for compensating crime victims.

2 EXISTING SYSTEMS FOR COMPENSATING CRIME VICTIMS IN THE NETHERLANDS

The Dutch state compensation scheme is based upon an Act that entered into force in 1976 (Council of Europe, 1978). Under the act payment can be made from the Compensation Fund to anyone, whether of Dutch or foreign nationality, who has sustained severe bodily injury as the result of a crime of violence committed in The Netherlands. According to jurisprudence only injuries with permanent effects or injuries causing work inability lasting at least six weeks are considered severe. The maximum amount of compensation for material damages is fixed at 5,000 pounds and for pain and suffering at 2,000 pounds. One of the other requirements for an award is that the victim must be incapable of bearing the damage himself without undue hardship. Most of the other requirements are very similar to those of similar schemes elsewhere and, therefore, do not need to be discussed. It might be of interest, however, to note that application cannot be denied on account of the victim's way of life. Neither are applicants obliged to report their case to the police.

The various legal means by which offenders can be urged to compensate their victims in The Netherlands seem to be greatly different from those used in the United Kingdom. Dutch law, like most continental law, does not allow the sentencing judge to order the offender to compensate his victim as a penalty. Instead, there are several diversionary and probation type solutions, as well as the system of partie civile.

Although the Dutch police are legally bound to report all crimes which have been cleared up to the prosecutor, juvenile delinquents and first offenders are dealt with routinely through some form of cautioning. Compensation for the victim can be part of these arrangements. The prosecutors themselves have the authority to abstain from formal prosecution in certain cases. In the case of crimes with a maximum penalty of up to six years imprisonment the prosecutor may invite the suspect to pay a fine and/or to compensate the victim as a way to prevent a trial (a so-called 'transaction'). National guidelines

have been issued by the Minister of Justice which instruct the prosecutors to offer such transactions in all cases which would otherwise be punished with a fine (in particular drunken driving, criminal damage and petty theft). Apart from his authority to offer the possibility of a 'transaction' the prosecutor has a general discretionary power to dismiss any case for reasons of expediency. One of the accepted grounds for such a decision is a settlement out of court between the offender and the victim concerning damages or other matters. The prosecutor can also make his decision to dismiss a case dependent upon the offender's willingness to compensate the victim within a certain period of time. All persons with a reasonable interest in the prosecution of a particular case which has been dismissed for reasons of expediency can appeal against this decision to the Court of Appeal. In practice, however, few victims make use of this procedure (e.g. 289 in 1983). If the offender is put to trial, the victim can sue him for civil damages within the framework of the criminal trial (the partie civile procedure). The maximum amount of the civil claim is fixed legally at 400 pounds. If the actual damages go beyond this limit no civil lawsuit can be pursued in a civil court afterwards as regards the remaining part. The victim who takes part in a criminal trial as partie civile can submit written and oral evidence to that court concerning his claim but may not invite his own witness. He has access to all files on the case.

Finally, the judge can impose partially or wholly suspended sentences of a fine or of imprisonment of less than one year provided that the offender will compensate the victim. If the offender does not comply with this condition, the prosecutor may subsequently demand from the judge the enforcement of the suspended sentence.

3 STATE COMPENSATION AND OFFENDER COMPENSATION IN PRACTICE

3.1 The Dutch Compensation Fund

Since its introduction in 1975, the Compensation Fund has annually received approximately 150 formal applications. Around 200 persons sent in a request to the Fund. A quarter of them, however, never return the Fund's formal questionnaire. The applications show a modest upward trend. Roughly half of the formal applicants were awarded some amount of compensation (on average 600 pounds for material damages and 500 pounds for pain and suffering).

According to a publication of the Central Bureau of Statistics approximately 30 percent of the victims of homicide and aggravated assault, registered by the office of the prosecutor, sustain severe bodily injury (CBS, 1973). In recent years approximately 1,500 of such cases were registered annually by the office of the prosecutor (CBS, 1981). On the basis of these data, the total number of victims who are potentially eligible for compensation can be estimated at around 500. In addition, some 1,500 cases of armed robbery and some 400 cases of rape are registered annually by the prosecutors. It may be assumed that at least 5 percent of the victims of these crimes have sustained severe bodily injury in the legal sense (Zoomer, 1981). This brings the estimate of the annual number of potentially eligible victims to about 600. As stated above, the actual number of formal applicants is 150. These calculations indicate that approximately 25 percent of all potentially eligible crime victims do file a claim. The probable main cause for this low application ratio is that most victims are not aware of the existence of the scheme. According to a finding of the national crime survey, less than 3% of the general public know that a compensation fund exists. Of the victims of violent crime who were interviewed in the course of the research project of the RDC mentioned above, only 14% knew of the Fund's existence.

As part of the RDC evaluation study, Cozijn (1983) has analyzed the files of the board of the Compensation Fund.

His study showed that on average the applications took nineteen months to be resolved. The delays appeared to have been caused primarily by the slow response by applicants to requests for additional information. In addition, the board's resolutions were delayed by its standard procedure of awaiting the outcome of the trial and a final medical report on the injuries sustained. Only in a few incidental cases were provisional awards granted. A correlational analysis furthermore showed that the Board was likely to deny applications or to grant reduced awards if the victim had been the first to use violence against the offender. In such cases the victim was often under the influence of drink. To sum up, the Dutch Compensation Fund receives around 150 applications annually. The percentage of all victims with severe injury who apply for an award can be estimated at 25. Considering the very low numbers of actual applicants and beneficiaries, there is no point in calculating precisely the proportion of victims of all violent crimes reached by the Fund. Annually about 15,000 crimes of violence are registered by the Dutch police. Even without taking into account the considerable dark numbers for violent crimes, these figures indicate that less than one per cent of all victims of violent crimes are reached by the fund. An even smaller percentage does actually benefit from the provisions of the Fund, since around half of all formal applications are denied.

3.2 Offender compensation

The police do not publish statistics on cases dealt with by means of cautioning or settlements between the victim and the offender. No statistics on this type of offender compensation are available. In fact, most police forces are reluctant to provide data on these practices at all.

In 1982 130,449 cases of common crimes (traffic offences and drugs offences excluded) were registered by the office of the public prosecutor. Of these cases 4,279 were dismissed on the ground that a settlement between the offender and the victim had been arrived at. According to a small pilot study, in half of these cases some form of compensation had been paid to the victims (around 2,000 cases). In the last six months of 1983 around 2,500 cases of common crimes were dealt with by means of a 'transaction'. In only 22 cases was compensation of the victim a part of this 'transaction'. Finally, the criminal statistics show that in 1981 1,275 suspended sentences were passed for common crimes with the special condition that the victim must be compensated for his losses. It is unknown how often full payment was actually made by the

offender to the victim as a result of such arrangements. It is to be expected that the number of actual payments would be much lower than the number of arrangements. The total number of compensation arrangements annually made or acknowledged by prosecutors or judges in The Netherlands adds up to about 3,300, which amounts to 2.5 per cent of all common crimes registered by the office of the public prosecutor.

No statistics are collected on the number of partie civile procedures or their outcome. The absence of any statistics on partie civile procedures - a phenomenon which is also found in France and West Germany - seems to be typical of the marginal and neglected role of the crime victim within criminal proceedings.

Some circumstantial evidence on the prevalence of partie civile procedures can be found in the findings of survey research among victims. In most surveys among victims, no distinction is made between the various formal kinds of compensation by the offender. However, according to the national crime survey of 1982 2% of all crime victims with material damages received some form of compensation from the offender. This percentage was highest among victims of criminal damage (5%).

In a 1974 survey among victims of serious crimes of violence and of serious burglaries registered by the Amsterdam police, Smale (1977) found that about 15% of victims of serious violent crimes and about 3% of the burglary victims had received some form of compensation from the offender. In half of these cases either the prosecutor or the judge had played a role in its arrangement. These findings indicate that the frequency of partie civile procedures is generally rather low. They also suggest that victims whose cases are tried and who are invited to attend the trial as witnesses - as many victims of serious crimes of violence are - have a somewhat higher chance than other victims of receiving compensation. It must be noted that only 40 per cent of all common crimes registered by the office of the public prosecutor are brought before a court. In the course of the RDC study on victim perceptions a sample was drawn of victims of crimes of violence (both serious and less serious). Only 5 per cent of these victims had received some form of compensation from the offender. This finding underlines the conclusion that partie civile procedures are not commonly entered by victims of ordinary crimes.

To sum up, in 2.5 per cent of all cases of common crimes (traffic and drug offences excluded) registered by the office of the public prosecutor, some form of compensation by the offender is formally arranged by the judicial authorities. The number of informal arrangements by the police and of partie civile procedures is not known. Survey research among victims suggest that the

percentages of victims who receive compensation from the offender in any way, are generally rather low (ranging from 2% for burglary victims, 5% for victims of criminal damage and 5% for victims of minor violent crimes up to 15% for victims of serious crimes of violence).

4 THE CURRENT RDC RESEARCH PROJECT ON THE ATTITUDES OF VICTIMS

In order to evaluate the impact of the special provisions and services for victims, samples were taken from the files of the Dutch compensation Fund and from the clients of two victim support schemes. In addition, samples were drawn from the files of three different police forces. The field work for this project is not yet complete. In this paragraph, however, some preliminary results will be presented concerning the applicants to the Dutch Compensation Fund. The response rates of the various groups of respondents centred around 50 per cent. This rather low response rate is most probably due to the fact that all respondents were approached primarily by the various official agencies and not by the RDC itself. The data were collected by means of personal interviews. In total, 81 interviews were conducted with applicants of the Fund. In addition, 147 interviews were held with victims of violent crimes who did not apply for compensation. For a more detailed description of the study's methodology the reader must refer to forthcoming publications of the RDC.

5 OPINIONS OF APPLICANTS ON THE COMPENSATION FUND AND ON COMPENSATION BY THE OFFENDER

Of the 81 applicants of the Fund interviewed, 41 had been granted an award by the time of the interview. The applications of 19 respondents had been turned down by the Board. The applications of the other claimants had not yet been resolved or had been withdrawn at an early stage. Of all the applicants to the Fund, 33% had been informed about the Fund's existence by a solicitor and 13% by the police.

Fifty seven per cent of the applicants stated that, in their opinion, the Board's decision had been delayed unnecessarily. Of those applicants who had received an award 54% were dissatisfied with the amount. The outcome of the application strongly affected the applicant's general opinion on the Fund. Of those granted an award, 54% expressed satisfaction with the Fund's overall performance. None of the victims whose applications had been denied, was satisfied. The respondents were specifically asked whether compensation should in principle be paid by the offender, by the State or by both. More than two-thirds of both the beneficiaries of the Fund and of the other victims expressed a clear preference for compensation being paid by the offender. Half of all applicants also stated that the payment of compensation by the offender should be considered as a mitigating factor by the judiciary.

Some additional data suggest that the punitive or moral aspects of offender compensation in particular are valued by victims. Two-thirds of all victims, regardless of the outcome of their application, said that the punishment imposed upon the offender was too lenient. The respondents were asked to evaluate six different aims of inflicting punishment upon offenders. The aim of urging the offender to admit his guilt and compensate his victim was supported by 58% of all victims. Of the other aims quoted such as special deterrence, general deterrence, rehabilitation and retribution, only special deterrence was supported by a somewhat higher percentage of victims.

6 OPINIONS OF APPLICANTS AND NON-APPLICANTS ON THE POLICE AND THE JUDICIAL AUTHORITIES

One of the expressed goals of victim compensation programs is to produce more favorable and co-operative attitudes of crime victims towards the criminal justice system. Although this instrumental view on the program has been less emphasized by the Dutch and other European legislators than by their counterparts in North America, the envisaged positive impact upon victims' attitudes has certainly been one of its justifications. As a first step in the analysis, the opinions of the applicants who were granted an award and those of the rejected applicants were compared with each other. The results of this comparison are presented in Table 1.

Table 1: Opinions of applicants to the Dutch Compensation Fund on the Fund, the police and the judicial authorities, according to the outcome of their application.

	claims awarded (n=41)	claims denied (n=19)
- satisfaction with the Fund (yes)	54% (s) ¹	0%
- less confidence in the police (yes)	14% (s)	47%
- less confidence in judicial authorities (yes)	42% (ns)	47%
- satisfied with treatment bij police (yes)	88% (s)	61%
- satisfied with overall job performance of judicial authorities (yes)	56% (s)	26%

¹ Differences between the number in the first and second column have been tested for significance at $p < .01$ (χ^2 test).

These show that the beneficiaries of the Fund hold significantly more favorable attitudes towards both the police and the judicial authorities than victims whose applications have been denied. The latter have, much more often, reduced confidence in the police. They also are much less satisfied with the way their cases have been dealt with by the police and with the overall job per-

formance of the judicial authorities. These findings show that the experiences of victims with the Fund affect their attitudes towards the criminal justice system. No differences have been found, however, between both groups in their willingness to report future crimes of violence to the police (approximately 70 per cent of both groups intended to do so). The differences in opinion brought about by the victim's opposite experiences with the Fund can be accounted for in two ways. The first hypothesis is that its beneficiaries positive judgement on the Fund itself does indeed spill over onto their attitudes towards other components of the criminal justice system. The second hypothesis is that a rejection of an application by the Fund leads to feelings of resentment which are partly redirected towards the police and the judiciary. Both or either of these hypotheses might be true.

In order to test these hypotheses, the opinions of both the beneficiaries and the rejected applicants have been compared with those of a group of non-applicants. Since a previous analysis showed that the opinions of victims on both the police and the judicial authorities are greatly affected by the outcome of their case, the comparison was limited to those victims of violent crimes whose cases had been tried at court. In The Netherlands less than half of such cases are tried in court. As a consequence, there are not sufficient cases to allow for tests for statistical significance. The results presented in Table 2 must, therefore, be viewed as being merely suggestive.

Table 2: Opinions of applicants to the Dutch Compensation Fund whose cases had been tried and of a control group of non-applicants on the police and the judicial authorities.

	award granted (n=27)	award denied (n=8)	non-applicants (n=29)
-less confidence in the police (yes)	19%	30%	14%
-less confidence in the judicial authorities (yes)	48%	50%	41%
-satisfied with treatment by police (yes)	89%	43%	76%
-satisfied with overall job performance of judicial authorities (yes)	56%	37%	52%

The findings in Table 2 support the hypothesis that negative feelings towards the Fund bring about negative feelings towards the police and possibly the judicial au-

thorities as well. Such negative side effects of the Fund's activities have also been found by Elias (1983) for two compensation schemes in the USA. Possibly this 'spill-over' of negative attitudes is partly caused by psychological mechanisms like transference or generalisation of feelings of resentment. Also, it is likely that some of the rejected applicants suspected the police of having channelled negative information about them to the Fund (e.g. concerning acts of provocation).

The findings in Table 2 do not lend much support to the hypothesis of a spin-off of positive opinions on the Fund to other criminal justice agencies. This disappointing finding is in accordance with the findings of Doerner and Lab (1980) in Canada and Shapland (1982) in Britain on the same issue.⁰¹

According to our reasoning, beneficiaries are likely to give credit for their award to the police (or the prosecutor) only if the latter advised them to file a claim. In our study, however, very few applicants were informed about the Fund by these functionaries.

To sum up a majority of all applicants to the Fund were dissatisfied by the long delays. In spite of these criticisms of the procedure, most beneficiaries were satisfied with the performance of the Fund. All applicants whose claims have been rejected, however, were quite resentful about their experiences with the Fund. Since the Fund turns down around 60 per cent of all claims, the Fund on balance tends to generate more negative than positive feelings amongst its applicants. Our data, like those of Elias, suggest that a substantial proportion of the rejected applicants tend to blame the police and/or the judicial authorities for their failure to be granted an award. On the other hand, our data lend little support to the hypothesis that the Fund's beneficiaries adopt more favorable attitudes to the criminal justice system. As a consequence, the Fund fails to achieve its instrumental aim of fostering positive attitudes towards the criminal justice system among victims. It may be that the Fund even generates adverse effects in this respect.

Finally, our results indicate that the concept of compensation by the offender is much more appealing to the victims of violent crimes than compensation by the state. Compensation as punishment seems to have a great potential for satisfying the victim's demand that justice is

⁰¹ The analysis of Doerner and Lab (1980) was limited to a comparison between the opinion of beneficiaries and rejected applicants. Unlike Elias and ourselves they did not find any significant difference between the attitudes of these two groups. The analysis of Shapland (1982) was limited to a comparison between beneficiaries and non-applicants.

done to all parties concerned. The few victims in our present sample and in the national crime survey of 1982, who had actually received compensation from the offender, almost unanimously expressed their great satisfaction with this outcome.⁰²

⁰² In the present sample seven victims had been compensated for their losses by the offender. In the NCS of 1982 16 of such victims were identified, of which 15 expressed their satisfaction with this outcome.

7 DISCUSSION

On the basis of these results I would like to suggest the following three conclusions on compensation by the state and the various forms of compensation by the offender.

1. State compensation schemes have generally failed to achieve both their social welfare aim of bringing financial relief to a substantial proportion of victims of crime and their instrumental aim of fostering more positive attitudes towards the administration of criminal justice.

The percentages of victims of violent crimes who benefit from state compensation schemes vary between less than one in Holland and France (Trioux, 1984)⁰¹, around 2% in Canada (Hastings, 1983), the USA (NIJ, 1980)⁰², and W. Germany (Villmow and Plemper, 1984) to about fifteen per cent in Britain (Miers, 1984). The recent introduction of a threshold for minimum losses of 400 pounds in Britain is likely to reduce the CICB's coverage to ten per cent. These international data testify to the overall ineffectiveness of state compensation schemes as social welfare programs. In addition, research findings from Holland as well as from the UK (Shapland, 1983), the USA (Elias, 1983) and Canada (Doerner and Lab, 1980, Hastings, 1983) refute the notion of state compensation as producing good public relations for the criminal justice system or the government.

⁰¹ The scope of the French scheme has been expanded in 1983.

⁰² The application ratios in the various states of the USA vary between two and seven percent (NIJ, 1980, p. 120). According to Elias (1983) one-third of the applicants are awarded compensation. On the same ground the German and British percentage of beneficiaries has been estimated by subtracting the proportion of denied applications from the total percentages of applicants.

2. Arranging compensation by the offender within the frame of the criminal justice system strongly appeals to both victims and the public at large.

Our data indicate that victims of violent crimes prefer the payment of compensation by the offender to an award from a state fund. Victims appear to be specifically attracted by the idea of compensation as punishment. They consider payment of compensation as a legitimate ground for a more lenient sentence. Results from a national survey show that a large majority of the Dutch public regards compensation by the offender as a very suitable way to address the crime problem. Equally, recent surveys in the UK (Shaw, 1982) and New Zealand (Galaway, 1984) show that the public accepts compensation as an alternative to imprisonment for large categories of offenders.

The case for compensation or reparation by the offender is further supported by the consistent finding that most victims who have received such compensation are greatly satisfied with it. This has been reported by Vennard (1978) and Shapland (1982) in Britain, and by Smandych (1981) and Bonda et al. (1983) in Canada. Our own limited data on this issue show a similar pattern. When compensation is ordered by a judge or otherwise arranged within the framework of the criminal justice system, the victim's satisfaction is likely to spin-off onto the responsible authorities. Such positive effects of compensation orders upon the victim's attitudes toward the judiciary have indeed been found by Shapland (1982).

3. Diversionary models of compensation by the offender as well as the British 'compensation orders' are actually and potentially more effective than the continental model of the 'partie civile'

In the UK 127,000 offenders were ordered to pay compensation in either Magistrates' courts or Crown courts. More than sixty per cent of the offenders sentenced in Magistrates courts for criminal damage, approximately 50 per cent of those sentenced for fraud and forgery and around 35 of those sentenced for burglary have been ordered to compensate their victims (C. of E. memorandum, 1984). These data on the performance of the British institution of the compensation order compare favorably with the data available on the performance of the Dutch partie civile procedures and the conditional suspended sentence or dismissal. Data from West Germany on similar procedures (Adhaesionsverfahren and reparation as a substitute for criminal proceedings) also show relatively poor results (C. of E. memorandum, 1984).⁰³

The inadequacies of the Dutch partie civile provision can be summarized in the following points:

- More than half of all cases concerning crimes with individual victims are not formally tried.
- If a case is tried in court, only victims who are summoned to be present as witnesses are informed about the trial.
- Victims who choose to be 'partie civile' have to find their way around the bureaucracy of the office of the prosecutor and the courts and must themselves submit evidence concerning their damages. Free legal aid is available only when a means test can be passed. In cases of small damages the time and energy required is out of proportion to the possible benefits.
- The 'partie civile' has no guarantee that the judge will indeed express an opinion on his civil claim; the judge might choose to refer it to a civil chamber.
- If the civil claim is granted by the judge the victim still has to collect the money on his own account. In many cases the victim is obliged to ask for the assistance of a bailiff ('deurwaarder') for this purpose.
- According to an informed estimate only half of the victims whose 'partie civile' claims have been granted by the judge succeed in collecting the money from the offender.

Some of these shortcomings could probably be remedied by technical changes within the provisions like those recently introduced in France (Vérin, 1983). It is doubtful, however, whether any changes, short of the imposition upon the prosecutor of the duty to assist the victim both in the procedure and in the collection of the money, will really enhance the effectiveness of this model.⁰⁴ In most continental jurisdictions, the prosecutor largely controls both the criminal proceedings and the enforcement of sentences. For this reason his office is uniquely qualified to secure the compensation of the victim by the offender. For instance, both in West Germany and in Holland, the prosecutors might be instructed to make the payment of compensation to the victim a standard condition for waiver of the prosecution. Offenders who

⁰³ In 1981 170,000 cases were settled by the prosecutors in the various states by imposing special obligations upon the offender instead of entering criminal proceedings. The percentages of 'compensation orders' varied between 2 and 16 per cent. The partie civile procedure is reported to play a negligible role in West Germany too.

⁰⁴ For example in Spain the prosecutor is legally bound to sue for civil damages within criminal proceedings in all suitable cases.

refuse to make an effort to compensate the victim, although their financial resources permit them to do so, ought to be put to trial. In fact, the adoption of this principle was recently recommended by a government committee on the position of victims in The Netherlands. In addition, continental governments should seriously consider the introduction of the compensation order as a new penal sanction. If prosecutors were to be instructed to prepare or demand such orders in all suitable cases, this provision would seem to have great potential for securing compensation for a sizable proportion of the victims of more serious crimes. Such a provision would also satisfy the demand for justice from both victims and the public at large and provide an alternative to custodial sentences.

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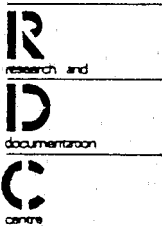
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